

THE FUTURE

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Thank you for asking me to speak today and for giving me such a broad topic as "The Future". It is tempting to range far and wide espousing my prescriptions for changing the world. However, I will avoid this once-in-a-lifetime opportunity and control myself. I'll stick to the general areas you have been discussing today. I am sorry not to have been able to be here for all the other papers, because many of them sounded as though they would be interesting and challenging.

I'll take the opportunity to get a few complaints off my chest about how things have worked in the past, and still do, which I guess clearly implies that I think they ought to change in the future. But, optimist though I generally am, I have to be realistic and accept that the necessary changes won't always happen, or at least won't happen very quickly. That's mostly because of the inherent nature of politics, which does not encourage trust of, or cooperation with, the other side, and which demands that every little change be taken to win in the political point-scoring game.

First, as you were dealing with the processing of legislation by Parliament earlier today, I should go back a step and tell you of my dissatisfaction with the way in which Bills are sometimes considered within the government.

Time after time, a Bill arrives at the weekly Tuesday morning caucus meeting without its having been to the relevant caucus committee as it is supposed to under our rules. It is okayed by caucus virtually sight unseen, perhaps just subject to check by the caucus committee at its meeting later in the week. Often the parliamentary program demands that the Bill be introduced into the House before then anyway, or we are told that has to happen even if the committee discovers the odd flaw in the drafting, or even if there is more substantial objection.

We approve the Bill at caucus partly because it was long ago deemed unacceptable to roll the cabinet, but perhaps more so because we do trust the minister concerned. But then you get an uncomfortable feeling when you discover that the minister received the Bill only late on the Monday night, and the Office of Parliamentary Counsel (OPC) was still desperately working on the drafting that afternoon. The minister trusted his or her staff, who trusted the department and OPC to get it right. I have nothing but admiration for the very professional job done by our legislative drafters, but I know that they are put under such time pressures that their product is sometimes inevitably far from perfect, which is very sad for a pedantic bastard such as I am often accused of being.

It is entirely within the hands of my fellow caucus members and me to fight for fuller involvement, to insist on the correct processes. But, of course, everyone is so busy themselves that there aren't enough hours in the day to be involved at a level which I would regard as satisfactory. So we keep our fingers crossed and hope that

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someone else who did have time to look at the Bill, did so thoroughly and was approving of its provisions. Of course just as important an involvement should occur at earlier stages of the process, when drafting instructions are prepared, and before that when the policy is developed. And there the appropriate involvement is very uneven. Some ministers are great in ensuring caucus committees are fully involved - and some even ensure it's all in accordance with the Party platform!! - but others remember only at the last minute.

All this should not matter too much to someone outside the caucus, except that there is a tendency, once a Bill has been introduced, to defend its every detail as if it were holy writ, instead of merely the best attempt in the time available to translate an intention into legal words. This is where it gets very galling - the government fights tooth and nail against opposition amendments in the House of Representatives, and then the non-government majority in the Senate make heroes of themselves by sometimes appropriate amendments to the Bill, when we should have fixed it up ourselves in the first place before even introducing it. I'm very happy defending the collective government position on a Bill, provided we've all been fully involved in the process (with enough time) and the decision really is truly collective.

Mostly, of course, opposition amendments are based more on a difference in attitude to the policy of the Bill. There are of course exceptions, such as when amendments are suggested by Liberal Senator John Watson, who is the deputy chair of the committee I chair. He is usually genuinely helpful in trying to improve legislation in areas such as tax and superannuation in which he takes a close and expert interest. He is often accepted by

ministers as being correct on a matter, and his amendments are sometimes readily agreed to. I suspect he often gets into hot water with his colleagues, most of whom think that he is far too helpful to the government and that he really should let us stew in our mistakes!

I emphasise I'm not talking about amendments involving significant differences on policy or basic ideology, where I'm as keen as anyone to hold the line against the forces of darkness. I'm just talking about sensible amendments to improve the Bill or to avoid problems which will eventually arise. I think there are times when sensible opposition amendments, proposed with goodwill and without the sole purpose of scoring political points, can be and should be accepted by the government. And it would have the added advantage of reducing the concentration on the Senate as being the more relevant part of the legislature.

Recently, more Bills have been referred to House of Representatives standing committees, and that is a welcome development. I am hoping that the introduction of the Main Committee procedure in the House of Representatives will also help to redress the balance. I regret the Senate's reputation as the better legislative chamber, a reputation which is sometimes overstated. It's not a competition (or it shouldn't be), but there is an opportunity for the House of Representatives to do some careful analysis of Bills and reduce the need for the Senate to do the same quite so much. I further hope that that new process won't make it less likely that improvements are made in the way we deal with Bills within the government before their introduction.

There is also hope for things being done a better way now that we have

this system of three periods a year of parliamentary sittings, instead of two. The idea is that most Bills will be introduced, without urgency, in one period and not debated until the next period. This should improve things for the consideration of Bills by non-government members and senators and by interested groups in the community. It should also allow for more systematic, technical review of Bills when required. The only trouble is that there may still be a tendency to rush a Bill through caucus and into the Parliament to ensure it is introduced in the period of sittings before that in which the government wants it passed. And of course May budget Bills with 1 July start dates have to be drafted and proceed through all stages in a pretty tight time frame.

Of course much of the problem is because of the environment in which we operate - it's the very existence of the Senate. I know there are those who have convinced themselves that it is the only thing standing between good and evil, but it is in the interests of such people to keep pushing such a line. But I believe that it is only because it is there, that more improvements aren't made elsewhere, such as in the House of Representatives. I claim to speak with a more balanced outlook than most, because of having been a member of both Houses in my time, but then I was also a victim of the misuse of an accidental majority in the Senate in 1975, so maybe I have a prejudice to declare.

If there were to be only one House, it wouldn't happen simply by abolishing the Senate and leaving everything else unchanged. There would have to be a wide variety of inbuilt checks and balances to guard against abuse of power. It would have to be unconstitutional for a Bill to proceed through all stages in less than, say, a month, so that those very important

aspects of democracy - public opinion - or informal democracy as I like to call it - can get into action and ensure that the message gets through to the Government that some outrageous proposal that may have been introduced is unacceptable. The Senate's present value is mostly in ensuring that there is that sufficient time.

There would also be prescribed minimum requirements for referral to committees, and there would be an atmosphere of cooperation and goodwill. Maybe some of you are now beginning to think I am being ridiculously idealistic, but I would like to think it was possible. With the Senate there, in the form in which it is, such an atmosphere is unattainable. It's all very well to say there should be a second opinion but, if so, why not a third opinion, and a fourth? I think it would be so much better for the variety of opinions to be thrashed out around the one table.

I acknowledge that there would be persuasive arguments for part of a single House to be elected by proportional representation to bring in a degree of minority leavening. A dual method of election to a single House is one of the proposals being considered in Tasmania for reform of the Parliament there. No one method gives a perfect democratic outcome, but we ought to be able to get closer to perfection than we have now. We will eventually change from our present monarchical arrangements, we will have constitutional change of substance, but I am not seriously suggesting that more radical change is likely, or even possible. I know as well as anyone how hard it is to achieve even simple and seemingly innocuous amendments to the Constitution, let alone substantial change. But sometimes I indulge in the odd dream.

Of course there are many useful things that the Senate and its committees do. The Regulations and Ordinances Committee is a case in point. It acts as a watchdog, in a mostly low-profile non-partisan way, on that huge volume of subordinate legislation that never stops. There is no point in the House of Representatives duplicating that function. But if there were to be a unicameral system, there would have to be such a committee, and it would do the same useful job that the present one does.

There have been some significant universally welcomed reports from Senate committees, just as there have been from House of Representatives committees. But there is wastefulness in having a virtually parallel system of committees, unable to sit jointly. And insufficient liaison. Overlap can happen, but more often issues can be overlooked because of lack of coordination, and there are ridiculous jealousies - not so much between the members of committees but between the parliamentary bureaucracies which sometimes believe they personally own the institutions for which they work.

The system of Senate committees reviewing Bills, which was begun three or four years ago, has worked differently from how it was initially envisaged. The intent was that Bills would be selected for referral by an all-party group making genuine judgements about which ones were appropriate for committee consideration. However, the Selection of Bills Committee does not do that. It is merely a mechanism for recording which Bills either the opposition or the Democrats want referred, because those two groups have an arrangement that, if either one wants a Bill referred, the other will support it in the chamber. There is a certain inevitability about those sorts of

numbers, and the government accepts that reality. But we're not really part of a genuine process.

It was also intended that mostly, Bills would be referred after the second reading had been passed and the policy issues settled, and that the standing committee process could lead to recommended amendments. It was intended that the committee stage in the whole Senate could be avoided and much time would be saved. It soon became clear that generally there was not opposition acceptance of bypassing the committee-of-the-whole if a Bill had gone to a standing committee. So I don't think it can be claimed that time has been saved. Also, Bills have mostly been referred before the second reading and witnesses invited to comment on the Bill and its policy at standing committee hearings, so the debate in the Senate is often just a rehash of what was said at the standing committee. Sometimes the process has meant useful interest-group involvement, and many organisations have felt good about having had their day before a committee, but I remain to be convinced that the process is anywhere near as worthwhile as had been promised.

It was thought that the quality of the drafting could be addressed in a bipartisan spirit, but drafting issues are rarely raised. The objective of producing technically better legislation has been lost and the process has - not always, but sometimes - degenerated into yet another forum for political point scoring.

There have been occasional minor benefits from committee reviews of Bills. A hearing of the Finance and Public Administration Committee last year, for example, led to a fairer system of taxing credit unions than that proposed in the 1993 Budget.

The government was prepared to make a sensible change in that case when the need for it became apparent in the committee process. But, despite a few such successes, most of the Senate committee hearings on legislation have not proved to be as successful as they could have been.

I have had my moan about Senate Estimates Committees many times in the past, and have suggested ways in which they could be improved, with a reduction in the waste and stress for all concerned. Some already do it some of the time, but I think there is scope for making the estimates process work better, with genuine, non-aggressive review of past and future portfolio program spending. But it does require a change of attitude that does not coincide with making every political post a winner - a notion that eventually, after all your fishing expeditions and trick questions, and unfortunately sometimes straight-out abuse, you as an opposition senator will ask the very question that brings the government down. I live in hope of the change of attitude required.

The Senate estimates committees can serve the useful purpose of forcing the government and the Public Service periodically to consider what justifications they can advance for their policy and administrative decisions. But too often the estimates hearings degenerate into fishing expeditions or headline grabbing stunts. It is rare for any issue of significance to be effectively explored in estimates committee hearings. It is far more common for large numbers of highly paid public servants and politicians to be detained for hours while individual senators pursue minor points of detailed information which they could have obtained by other means and which, as far as can be judged by their later activities, they neither need or use. Regrettably,

there has also been a tendency for some senators to chase cheap headlines by hectoring and bullying public servants.

That practice has proven very hard to control. As an estimates committee chair, I have faced the problem of having to decide how far I should try to protect a witness, knowing that an attempt to prevent cowardly bullying can be portrayed as a cover up. Such a perception can be more productive of headlines for the bully, and more damaging to the witness in some cases, than it would be to allow the offensive questioning to continue.

There may be an unintended side-benefit from the current review of the Senate committee structure resulting from the opposition's wanting more of the committee chair positions. It just might happen that portfolio performance review by one stream of Senate committees will be undertaken in a more calm, more considered way over a period of time instead of the heavy stress that is involved in binding that function up with consideration of the Appropriation Bills, and doing it all in blockbuster fashion by estimates committees over only a few days and nights twice a year. In fact, I am going straight from here into a Procedure Committee meeting which might, just might, lead to that preferable process I mentioned. Maybe over the next year or two, he said with his optimistic head on, reason will prevail.

The Senate Finance and Public Administration Committee has always interested itself in accountability and its processes. We have published report after report on these matters and, over the years, the accountability system has continued to improve. Australia has a Public Service of which it can be proud and, while acknowledging the criticisms I have voiced, the way in which it interacts

with the Parliament is generally good. Some people may complain about some aspects of it, but the accountability processes we have are excellent. There is a high degree of accountability of the executive to Parliament. There will always be tensions arising as each side, or parts of each side, test each other out about the limits on accountability - or answerability, which is the term I think is sometimes more appropriate.

Our various types of committee processes do open up some important areas of government activity to public scrutiny. A lot can be said in their favour. They clearly have a most important function to perform. However, there are times when the use of the various accountability processes becomes excessive; when they are used solely for headline-grabbing; when demands for information are made (rather than just requests); when senators or estimates committees forget to behave in a civil manner towards Public Service witnesses who are genuinely trying to balance their duty to their minister and their duty to the Parliament. There is often a thoughtless demand for more information than is really needed, yet a huge amount of valuable time and effort can be expended on delving for and presenting that information. The guilty ones are usually the same people who are most critical of public sector waste and inefficiency and who repeatedly demand that fewer and fewer staff be employed!

So, despite all the review mechanisms which exist for both Bills and administration, there is often failure to use those mechanisms sensibly, effectively and fairly. It is depressing that their full potential is not being realised in keeping the executive on its toes and in improving legislation.

But we have to remember that too often Parliament is seen as some sort of cohesive institution separate from and opposed to the executive. In fact, Parliament is a forum in which political forces contend. This means, however, that if we want parliamentary processes to contribute to good legislation, good policy and good administration, we need to design them in the knowledge that Parliament will not behave as a single, rational institution but rather will serve primarily as a forum for political argument. Sometimes it will be good for the system if parliamentary scrutiny is politicised in the party sense. In other cases, we want relatively non-partisan parliamentary discussion of ways of improving administration or policy processes. An ideal set of parliamentary reforms would separate the two sorts of processes as far as that can be done. There has been enormous progress over the years. Much more could be achieved, and some of us will continue to work for improved outcomes.

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